

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

UNITED STATES OF AMERICA	§	
Vs.	§	CRIMINAL ACTION NO. 9:04CR49
XAVIER SMITH	§	

FINDINGS OF FACT AND RECOMMENDATION ON FELONY GUILTY
PLEA BEFORE UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Judge for administration of the guilty plea and allocution under Rule 11 of the Federal Rules of Civil Procedure.

On the 20th day of June, 2005, this cause came before the undersigned United States Magistrate Judge for Guilty Plea and Allocution of the Defendant, Xavier Smith, on the 1-Count Information¹ filed herein charging him with a violation of Title 18, United States Code, Section 371. After conducting the proceeding in the form and manner prescribed by Fed.R.Crim.P. 11, the Court finds:

- a. That the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Judge.
- b. That the Defendant pled guilty to the 1-Count Information, pursuant to a plea agreement with the Government which has been filed and disclosed in open court pursuant to Fed.R.Crim.P. 11(c)(2). Count 1 of the Information charges the Defendant with conspiracy to commit an offense against the United States, in

¹In open court, the Defendant signed a waiver of Indictment.

violation of Title 18, United States Code, Section 371.

- c. That the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

IT IS THEREFORE the recommendation of the undersigned United States Magistrate Judge that the District Judge accept the Plea Agreement and the Guilty Plea of the Defendant, conditional upon a review of the presentence report, and that the Defendant, **XAVIER SMITH**, be finally adjudged guilty of that offense.

The United States District Clerk shall serve notice of this proposed Findings of Fact and Recommendation on all parties by electronic mail. Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings, conclusions and recommendations contained in this report. A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district judge. *Douglass v. United States Auto Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

So **ORDERED** and **SIGNED** this **21** day of **June, 2005**.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE